IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLICATION NO. 5523 OF 2004

WITH

CRI.APPLN.NOS.5524,5525,5526,5527 & 5531 OF 2004

Mrs. Kalpana Shashi Gopal & Anr. ..Applicants.
(Org.Accu.Nos.3 & 4)

V/s.

State of Maharashtra & Anr. ..Respondents.

Shri N.K. Thakore with Prakash Naik for the Applicants.
Shri S.R. Shinde, APP for Respondent -State.

WITH
CRI.APPLICATIONS NOS.5532,5533,5535,5536 & 5539/2004

Mrs. Kalpana Shashi Gopal & Anr. ..Applicants.

V/s.

State of Maharashtra & Anr. ..Respondents.

Shri N.K.Thakore with Prakash Naik for the Applicants.
Shri D.R. More, APP for Respondent -State.

WITH
CRI.APPLICATIONS NOS.5540,5541,5542,5543 & 5544/2004

Mrs. Kalpana Shashi Gopal & Anr. .. Applicants.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Shri N.K. Thakore with P.Naik for the Applicants.
Shri D.S. Mhaispurkar, APP for Respondent State.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 16, 2004

PC :-

. Heard counsel for the parties.

2. According to the learned counsel for the applicants in all these matters, even if the complaint is read as a whole, no offence is made out insofar as the present Applicants are concerned, who are named as Accused in the respective cases. It is also argued that Applicant No.2 is the resident of Chennai and even if he is director of the Company that alone is not sufficient to initiate criminal action against him. Moreover, the Applicants are not signatories to the cheques in question. I see no substance in any of these submissions. Whereas, on reading the complaint as a whole and in particular, paragraph 2, 3 and 12, it is clearly asserted that the applicants were directors at the relevant time and further were responsible for the day today affairs of the accused No.1 Company. Not only that, it is further alleged that they were responsible for the cheques in question. To get over this position, learned counsel for the Applicants placed reliance on the decision of

the Madras High Court reported in 1999 Company Cases (Vol.96) 534 to contend that once the Managing Director is made as an accused all the directors need not be named as accused in the complaint. This submission needs to be stated to be rejected. In the first place, the decision pressed into service no where takes the view that once the Managing Director of the accused Company is named as one of the accused, other directors shall not be made accused in the same complaint. All that this decision observes is that all the partners and directors need not be included in the complaint. That does not mean that even if the concerned directors - who are incharge of the affairs of the company and looking after the day to day affairs of the company, they are not liable to be prosecuted. That submission clearly overlooks the purport of section 141 of the Act. Viewed in this perspective, there is no substance in the argument as is canvassed.

3. The learned counsel then relied upon the decision of our High Court reported in **2001 Comapny Cases (Vol. 105) 655,** in the case of Dushyant D. Anjaria vs. Wall Streed Finance Ltd., to contend that on account of the provisions of company law, the

offence in question can proceed only against the Managing Director of the company and not other Managers and Directors, who are in any case not signatory to the cheque in question. Once again this submission over looks the rigours of section 141 of the Act, which provides that when any director incharge of or who was looking after the day to day affairs of the Company at the relevant time, he would be liable to be prosecuted in relation to the offence committed by the Company. Accordingly, as the complainant asserts that the Applicants were directors and incharge of the affairs of the Accused company at the relevant time, no fault can be found with the complaint as instituted. In other words, the decision pressed into service is not helpful in the fact situation of the present case in the context of the statutory liability arising in terms of section 141 of the Act.

4. Reliance was also placed on the decision of the Apex Court reported in **2004 ALL MR (Cri.) 3170 (S.C.),** in the case of Monaben Ketanbhai Shah & Anr. vs. State of Gujarat & Ors.. Once again this decision is not an authority on the proposition that even after the complaint specifically asserts about

the involvement of the concerned accused with the day to day affiars of the accused company, the criminal action cannot be proceeded. On the other hand in this reported case, the court found that there were absolutely no averment in the complaint about the fact that the concerned accused were involved with the day to day affairs of the firm. If such allegation is present then the fact whether the accused was so involved with the affairs of the company will be matter for trial to be proved in evidence.

5. The argument that the Applicant No.2 is resident of Chennai and, therefore, cannot be prosecuted, does not commend to me. The fact that the petitioner was not incharge of day to day affairs of the Accused company as is alleged, inspite of being director of the company, is an issue which will have to be decided at the trial after the parties have let in evidence in that behalf. The fact that the Applicant No.2 was resident of Madras, by itself, does not raise any presumption that he was not incharge of the affairs of the accused company. As stated earlier, that aspect will have to be answered at the end of the trial.

6. Accordingly there is no substance in these applications. Hence, dismissed.

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